

AMENDED IN ASSEMBLY APRIL 9, 2012

CALIFORNIA LEGISLATURE—2011–12 REGULAR SESSION

ASSEMBLY BILL

No. 1602

Introduced by Assembly Members Eng and Feuer
(Coauthors: Assembly Members Dickinson, Galgiani, and Skinner)

February 6, 2012

An act to ~~add Section 2923.7~~ amend Sections 2923.5 and 2924g of, to amend and repeal Section 2924 of, and to add Sections 2923.6, 2924.9, 2924.10, 2924.11, 2924.12, 2924.13, 2924.14, 2924.15, and 2924.16 to, the Civil Code, relating to mortgages.

LEGISLATIVE COUNSEL'S DIGEST

AB 1602, as amended, Eng. Mortgages and deeds of trust: foreclosure.

(1) Existing law, until January 1, 2013, requires a mortgagee, trustee, beneficiary, or authorized agent to contact the borrower prior to filing a notice of default to explore options for the borrower to avoid foreclosure, as specified. Existing law requires a notice of default to include a declaration stating that the trustee, beneficiary, or authorized agent has contacted the borrower, or has tried with due diligence to contact the borrower, or that no contact was required for a specified reason.

This bill would additionally require the borrower to be provided, if applicable, with a deadline for the borrower to submit an initial application for a loan modification. The bill would require the declaration to also state that the borrower was not a servicemember or dependent of a servicemember entitled to benefits under the federal Servicemembers Civil Relief Act, that the mortgagee, trustee, beneficiary, or authorized agent has possession of the note and mortgage, or deed of trust, and other specified documents that evidence

the right to foreclose, and has attached copies thereof to the declaration, as specified, or a separate declaration containing specified information, if the above described documents cannot be located. The bill would prescribe procedures and notices that must be sent by the mortgagee, trustee, beneficiary, or authorized agent if the notice of default was filed prior to January 1, 2013, and a notice of rescission was not subsequently recorded. The bill would prohibit recording a notice of default unless a specified written notice has been sent at least 14 days before a notice of default is recorded.

The bill would prohibit a notice of default from being recorded while a loan modification application is pending, under specified conditions, and would establish additional procedures to be followed regarding the loan modification application before a notice of default could be recorded.

(2) Existing law imposes various requirements that must be satisfied prior to exercising a power of sale under a mortgage or deed of trust, including, among other things, recording a notice of sale.

This bill would impose additional requirements pertaining to applications for loan modifications that must be satisfied prior to recording a notice of sale in order to exercise a power of sale. The bill would require a written notice to the borrower after the postponement of a foreclosure sale in order to advise the borrower of any new sale date, time, and location when the new sale date is at least 10 calendar days after the date of postponement, as specified.

The bill would establish procedures for a loan modification application process to be used after a notice of sale has been recorded.

The bill would prohibit a notice of sale from being recorded under certain conditions, including, among others, if the borrower is in compliance with a loan modification plan, forbearance, or loan repayment plan, as specified, or if a short sale or deed-in-lieu of foreclosure has been approved, as specified. The bill would require mortgagees, trustees, beneficiaries, or authorized agents to track and record specified data pertaining to loan modification agreements. The bill would prohibit the collection of late fees while a loan modification or short sale is being considered, if certain criteria are met.

(3) The bill would repeal duplicate provisions of law.

(4) The bill would authorize a borrower to seek an injunction of a pending trustee's sale if a notice of sale has been recorded and the borrower reasonably believes that the mortgagee, trustee, beneficiary, or authorized agent failed to comply with specified requirements. The

bill would authorize the greater of actual damages or \$10,000 in statutory damages if there is a failure to comply with specified requirements by the mortgagee, trustee, beneficiary, or authorized agent and the property is sold at a foreclosure sale. The bill would authorize the greater of treble damages or \$50,000 in statutory damages if the failure to comply is found to be intentional or reckless or resulted from willful misconduct, as specified.

(5) The bill would establish the Office of Homeowner Protection, that would have responsibility, among other things, for responding to inquiries and complaints from individuals regarding foreclosures and other procedures and requirements as described above, attempting to seek compliance by mortgagees, trustees, beneficiaries, or authorized agents regarding foreclosures and other procedures and requirements as described above, and maintaining an Internet Web site that is capable of receiving inquiries and complaints from individuals and that provides information to the public about publicly available resources intended to help individuals avoid foreclosure. The bill would express the intent of the Legislature that the office be funded by payments made available to the Attorney General via the Special Deposit Fund, created pursuant to specified federal settlement agreements.

~~Existing law requires that, upon a breach of an obligation of a mortgage or transfer of an interest in property, the trustee, mortgagee, or beneficiary record a notice of default in the office of the county recorder where the mortgaged or trust property is located and mail the notice of default to the mortgagor or trustor.~~

~~This bill would prohibit a mortgagee, trustee, beneficiary, or authorized agent from recording a notice of default unless the mortgagee, trustee, beneficiary, or authorized agent has made reasonable and good faith efforts to evaluate the borrower for available loan modification options to avoid foreclosure. The bill would authorize a borrower to seek to enjoin a foreclosure and to recover damages and reasonable attorney's fees in the event that the mortgagee, trustee, beneficiary, or authorized agent fails to comply with the bill's requirements.~~

Vote: majority. Appropriation: no. Fiscal committee: ~~no~~-yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 2923.5 of the Civil Code is amended to
2 read:

1 2923.5. (a) (1) A mortgagee, trustee, beneficiary, or authorized
2 agent may not ~~file~~ *record* a notice of default pursuant to Section
3 2924 until 30 days after initial contact is made as required by
4 paragraph (2) or 30 days after satisfying the due diligence
5 requirements as described in subdivision ~~(g)~~: *(h) and until the*
6 *requirements of subdivision (g) have been met.*

7 (2) A mortgagee, beneficiary, or authorized agent shall contact
8 the borrower in person or by telephone in order to assess the
9 borrower's financial situation and explore options for the borrower
10 to avoid foreclosure. During the initial contact, the mortgagee,
11 beneficiary, or authorized agent shall advise the borrower that he
12 or she has the right to request a subsequent meeting and, if
13 requested, the mortgagee, beneficiary, or authorized agent shall
14 schedule the meeting to occur within 14 days. The assessment of
15 the borrower's financial situation and discussion of options may
16 occur during the first contact, or at the subsequent meeting
17 scheduled for that purpose. In either case, the borrower shall be
18 provided the toll-free telephone number made available by the
19 *Office of Homeowner Protection and the United States Department*
20 *of Housing and Urban Development (HUD) to find a HUD-certified*
21 *housing counseling agency; and, if applicable, a deadline*
22 *for the borrower to submit an initial application for a loan*
23 *modification. Any meeting may occur telephonically.*

24 (b) A notice of default recorded pursuant to Section 2924 shall
25 include a declaration of the following:

26 ~~(b)~~
27 (1) ~~A notice of default filed pursuant to Section 2924 shall~~
28 ~~include a declaration that~~ *That* the mortgagee, beneficiary, or
29 authorized agent has contacted the borrower, has tried with due
30 diligence to contact the borrower as required by this section, or
31 that no contact was required pursuant to subdivision ~~(h)~~: *(i).*

32 (2) *That the borrower is not a servicemember or the dependent*
33 *of a servicemember who is entitled to the benefits of the*
34 *Servicemembers Civil Relief Act (50 U.S.C. Appen. Sec. 501 et*
35 *seq.).*

36 (3) *That the mortgagee, beneficiary, or authorized agent has*
37 *possession of the note and mortgage or deed of trust and evidence*
38 *of its right to foreclose, including documentation of any*
39 *assignments and endorsements of the mortgage note or deed of*
40 *trust. This evidence must be attached to, or specifically described*

1 *in, the declaration. If this proof cannot be located, the mortgagee,*
2 *trustee, beneficiary, or authorized agent shall include a separate*
3 *declaration signed either by an individual having personal*
4 *knowledge of the facts stated within, or by an individual with*
5 *authority to bind the mortgagee, trustee, beneficiary, or authorized*
6 *agent, who certifies that the declaration is based upon records*
7 *that were made in the regular course of business at or near the*
8 *time of the events recorded, stating the following:*

9 *(A) Facts sufficient to show that the mortgagee, trustee,*
10 *beneficiary, or authorized agent has the right to enforce the note.*

11 *(B) A statement that the person cannot reasonably obtain*
12 *possession of the note, and a description of the reasonable efforts*
13 *made to obtain the note.*

14 *(C) A description of the terms of the note and any riders attached*
15 *thereto, including, at a minimum the following:*

16 *(i) The date of execution.*

17 *(ii) The parties.*

18 *(iii) The principal amount of the loan.*

19 *(iv) The amortization period of the loan.*

20 *(v) The initial interest rate and, if applicable, the initial date*
21 *and the frequency of any adjustments to the interest rate, and the*
22 *index and margin used to calculate the interest rate at the time of*
23 *any scheduled adjustment.*

24 *(vi) The expiration date of any interest-only period, if applicable.*

25 *(c) If a mortgagee, trustee, beneficiary, or authorized agent had*
26 *already filed the notice of default prior to the enactment of this*
27 *section January 1, 2013, and did not subsequently file a notice of*
28 *rescission, then the mortgagee, trustee, beneficiary, or authorized*
29 *agent shall, as part of the notice of sale filed recorded pursuant to*
30 *Section 2924f, include a declaration that—either: states the*
31 *following:*

32 *(1) ~~States that~~ That at least 60 days prior to the borrower was*
33 *contacted to assess recording of the borrower's financial situation*
34 *and to explore options for notice of sale, or as soon thereafter as*
35 *possible, a written communication was sent to the borrower to*
36 *avoid foreclosure; that included all of the following information:*

37 *(A) The borrower can still be evaluated for alternatives to*
38 *foreclosure.*

39 *(B) Whether an application must be submitted by the borrower*
40 *in order to be considered for a foreclosure prevention alternative.*

1 (C) *The means and process by which a borrower may obtain*
2 *an application for a loan modification or any foreclosure*
3 *prevention alternative and the deadlines for any submission to be*
4 *timely processed.*

5 (2) ~~Lists the~~ *The* efforts made, if any, to contact the borrower
6 in the event no contact was made.

7 (d) A mortgagee's, beneficiary's, or authorized agent's loss
8 mitigation personnel may participate by telephone during any
9 contact required by this section.

10 (e) For purposes of this section, a "borrower" shall include a
11 mortgagor or trustor.

12 (f) A borrower may designate, with consent given in writing, a
13 HUD-certified housing counseling agency, attorney, or other
14 advisor to discuss with the mortgagee, beneficiary, or authorized
15 agent, on the borrower's behalf, the borrowers financial situation
16 and options for the borrower to avoid foreclosure. That contact
17 made at the direction of the borrower shall satisfy the contact
18 requirements of paragraph (2) of subdivision (a). Any loan
19 modification or workout plan offered at the meeting by the
20 mortgagee, beneficiary, or authorized agent is subject to approval
21 by the borrower.

22 (g) *No notice of default may be recorded unless the mortgagee,*
23 *beneficiary, or authorized agent has also sent a separate written*
24 *notice to the borrower that includes all of the following at least*
25 *14 days before any notice of default is recorded:*

26 (1) *A statement setting forth facts supporting the right of the*
27 *mortgagee, beneficiary, or authorized agent to foreclose on the*
28 *borrower's loan note.*

29 (2) *Notification that the borrower may receive, upon written*
30 *request to the mortgagee, beneficiary, or authorized agent, or to*
31 *any assigned single point of contact, a copy of the borrower's*
32 *payment history since the borrower was last less than 60 days past*
33 *due, a copy of the borrower's loan note, copies of any assignments*
34 *of the note and of the mortgage or deed of trust that would evidence*
35 *a right to foreclose on the borrower's property, and, if applicable,*
36 *the name of the investor that holds the borrower's loan note.*

37 (3) *An itemized plain language account summary setting forth*
38 *each of the following items:*

1 (A) *The total amount needed to reinstate or bring the account*
2 *current, and the amount of the principal obligation under the*
3 *mortgage.*

4 (B) *The date through which the borrower's obligation is paid.*

5 (C) *The date of the last full payment.*

6 (D) *The current interest rate in effect for the loan, if the rate is*
7 *effective for at least 30 days.*

8 (E) *The date on which the interest rate may next reset or adjust,*
9 *unless the rate changes more frequently than once every 30 days.*

10 (F) *The amount of any prepayment fee to be charged, if any.*

11 (G) *A description of any late payment fees.*

12 (H) *A telephone number or electronic mail address or the*
13 *contact information for any assigned single point of contact that*
14 *may be used by the borrower to obtain information regarding the*
15 *mortgage.*

16 (4) *A statement that if the borrower is a servicemember or a*
17 *dependent of a servicemember, he or she may be entitled to certain*
18 *protections under the Servicemembers Civil Relief Act (50 U.S.C.*
19 *Appen. Sec. 501 et seq.) regarding the servicemember's interest*
20 *rate and the risk of foreclosure, and counseling for covered*
21 *servicemembers that is available at agencies such as Military*
22 *OneSource and Armed Forces Legal Assistance.*

23 (5) *A statement to the borrower outlining the loss mitigation*
24 *efforts that had already been undertaken with respect to the*
25 *borrower, and, if no loss mitigation efforts were offered or*
26 *undertaken, a statement, if applicable, giving the reason why the*
27 *borrower is ineligible for a loan modification or other loss*
28 *mitigation options.*

29 (6) *The toll-free telephone number made available by the Office*
30 *of Homeowner Protection.*

31 ~~(g)~~

32 (h) *A notice of default may be filed pursuant to Section 2924*
33 *when a mortgagee, beneficiary, or authorized agent has not*
34 *contacted a borrower as required by paragraph (2) of subdivision*
35 *(a) provided that the requirements under subdivision (g) have been*
36 *met and the failure to contact the borrower occurred despite the*
37 *due diligence of the mortgagee, beneficiary, or authorized agent.*
38 *For purposes of this section, "due diligence" shall require and*
39 *mean all of the following:*

1 (1) A mortgagee, beneficiary, or authorized agent shall first
2 attempt to contact a borrower by sending a first-class letter that
3 includes the toll-free telephone number made available by HUD
4 to find a HUD-certified housing counseling ~~agency~~ *agency, and,*
5 *if applicable, a deadline for the borrower to submit an initial*
6 *application for a loan modification.*

7 (2) (A) After the letter has been sent, the mortgagee,
8 beneficiary, or authorized agent shall attempt to contact the
9 borrower by telephone at least three times at different hours and
10 on different days. Telephone calls shall be made to the primary
11 telephone number on file.

12 (B) A mortgagee, beneficiary, or authorized agent may attempt
13 to contact a borrower using an automated system to dial borrowers,
14 provided that, if the telephone call is answered, the call is
15 connected to a live representative of the mortgagee, beneficiary,
16 or authorized agent.

17 (C) A mortgagee, beneficiary, or authorized agent satisfies the
18 telephone contact requirements of this paragraph if it determines,
19 after attempting contact pursuant to this paragraph, that the
20 borrower's primary telephone number and secondary telephone
21 number or numbers on file, if any, have been disconnected.

22 (3) If the borrower does not respond within two weeks after the
23 telephone call requirements of paragraph (2) have been satisfied,
24 the mortgagee, beneficiary, or authorized agent shall then send a
25 certified letter, with return receipt—~~requested~~ *requested that*
26 *includes the toll-free telephone number made available by the*
27 *Office of Homeowner Protection and HUD to find a HUD-certified*
28 *housing counseling agency, and if applicable, a deadline for the*
29 *borrower to submit an initial application for a loan modification.*

30 (4) The mortgagee, beneficiary, or authorized agent shall provide
31 a means for the borrower to contact it in a timely manner, including
32 a toll-free telephone number that will provide access to a live
33 representative during business hours.

34 (5) The mortgagee, beneficiary, or authorized agent has posted
35 a prominent link on the homepage of its Internet Web site, if any,
36 to the following information:

37 (A) Options that may be available to borrowers who are unable
38 to afford their mortgage payments and who wish to avoid
39 foreclosure, and instructions to borrowers advising them on steps
40 to take to explore those options.

1 (B) A list of financial documents borrowers should collect and
2 be prepared to present to the mortgagee, beneficiary, or authorized
3 agent when discussing options for avoiding foreclosure.

4 (C) A toll-free telephone number for borrowers who wish to
5 discuss options for avoiding foreclosure with their mortgagee,
6 beneficiary, or authorized agent.

7 (D) The toll-free telephone number made available by HUD to
8 find a HUD-certified housing counseling agency.

9 (E) *The toll-free telephone number made available by the Office*
10 *of Homeowner Protection.*

11 ~~(h)~~

12 (i) Subdivisions (a), (c), (g), and ~~(g)~~ (h) shall not apply if any
13 of the following occurs:

14 (1) The borrower has surrendered the property as evidenced by
15 either a letter confirming the surrender or delivery of the keys to
16 the property to the mortgagee, trustee, beneficiary, or authorized
17 agent.

18 (2) The borrower has contracted with an organization, person,
19 or entity whose primary business is advising people who have
20 decided to leave their homes on how to extend the foreclosure
21 process and avoid their contractual obligations to mortgagees or
22 beneficiaries.

23 ~~(3) A case has been filed by the borrower under Chapter 7, 11,~~
24 ~~12, or 13 of Title 11 of the United States Code and the bankruptcy~~
25 ~~court has not entered an order closing or dismissing the bankruptcy~~
26 ~~case, or granting relief from a stay of foreclosure.~~

27 ~~(i)~~

28 (j) This section shall apply only to mortgages or deeds of trust
29 recorded from January 1, 2003, to December 31, 2007, inclusive,
30 that are secured by owner-occupied residential real property
31 containing no more than four dwelling units. For purposes of this
32 subdivision, “owner-occupied” means that the residence is the
33 principal residence of the borrower as indicated to the lender in
34 loan documents.

35 ~~(j) This section shall remain in effect only until January 1, 2013,~~
36 ~~and as of that date is repealed, unless a later enacted statute, that~~
37 ~~is enacted before January 1, 2013, deletes or extends that date.~~

38 SEC. 2. Section 2923.6 is added to the Civil Code, to read:

39 2923.6. (a) *The Legislature finds and declares that any duty*
40 *servicers may have to maximize net present value under their*

1 *pooling and servicing agreements is owed to all parties in a loan*
2 *pool, or to all investors under a pooling and servicing agreement,*
3 *not to any particular party in the loan pool or investor under a*
4 *pooling and servicing agreement, and that a servicer acts in the*
5 *best interests of all parties to the loan pool or investors in the*
6 *pooling and servicing agreement if it agrees to or implements a*
7 *loan modification or workout plan for which both of the following*
8 *apply:*

9 *(1) The loan is in payment default, or payment default is*
10 *reasonably foreseeable.*

11 *(2) Anticipated recovery under the loan modification or workout*
12 *plan exceeds the anticipated recovery through foreclosure on a*
13 *net present value basis.*

14 *(b) It is the intent of the Legislature that the mortgagee,*
15 *beneficiary, or authorized agent offer the borrower a loan*
16 *modification or workout plan if the modification or plan is*
17 *consistent with its contractual or other authority.*

18 *(c) If a borrower submits an application for a loan modification*
19 *within 120 days after delinquency and a notice of default has not*
20 *yet been recorded, a mortgagee, trustee, beneficiary, or authorized*
21 *agent shall not record a notice of default while the loan*
22 *modification application is pending. A mortgagee, trustee,*
23 *beneficiary, or authorized agent shall not record a notice of default*
24 *until either:*

25 *(1) The mortgagee, trustee, beneficiary, or authorized agent*
26 *makes a determination that the borrower is not eligible for a loan*
27 *modification.*

28 *(2) If the borrower does not accept an offered trial or permanent*
29 *loan modification or other foreclosure prevention alternative, the*
30 *earlier of the date of the borrower's decline of the stated offer or*
31 *the borrower's deadline for accepting the offer, which may not be*
32 *less than 14 days from the date the borrower was notified of the*
33 *offer.*

34 *(d) If a borrower accepts an offered trial or permanent loan*
35 *modification under this section, a mortgagee, trustee, beneficiary,*
36 *or authorized agent shall not record a notice of default until the*
37 *borrower fails to timely submit the first payment or until the*
38 *borrower otherwise breaches the terms of the offer, whichever*
39 *event occurs first.*

1 (e) *If the loan modification requested by a borrower under this*
2 *section is denied, the mortgagee, trustee, beneficiary, or authorized*
3 *agent shall not record a notice of default until the later of:*

4 (1) *Thirty days after the borrower is notified in writing of the*
5 *denial.*

6 (2) *If the borrower appeals the denial, until the later of 15 days*
7 *after the denial of the appeal or 14 days after the loan modification*
8 *or other foreclosure prevention alternative is offered after appeal*
9 *but declined by the borrower; or, if a trial or permanent loan*
10 *modification is offered after appeal, until the borrower fails to*
11 *timely submit the first payment or until the borrower otherwise*
12 *breaches the terms of the offer, whichever event occurs first.*

13 SEC. 3. *Section 2924 of the Civil Code, as amended by Section*
14 *1 of Chapter 180 of the Statutes of 2010, is amended to read:*

15 2924. (a) Every transfer of an interest in property, other than
16 in trust, made only as a security for the performance of another
17 act, is to be deemed a mortgage, except when in the case of
18 personal property it is accompanied by actual change of possession,
19 in which case it is to be deemed a pledge. Where, by a mortgage
20 created after July 27, 1917, of any estate in real property, other
21 than an estate at will or for years, less than two, or in any transfer
22 in trust made after July 27, 1917, of a like estate to secure the
23 performance of an obligation, a power of sale is conferred upon
24 the mortgagee, trustee, or any other person, to be exercised after
25 a breach of the obligation for which that mortgage or transfer is a
26 security, the power shall not be exercised except where the
27 mortgage or transfer is made pursuant to an order, judgment, or
28 decree of a court of record, or to secure the payment of bonds or
29 other evidences of indebtedness authorized or permitted to be
30 issued by the Commissioner of Corporations, or is made by a public
31 utility subject to the provisions of the Public Utilities Act, until
32 all of the following apply:

33 (1) The trustee, mortgagee, or beneficiary, or any of their
34 authorized agents shall first file for record, in the office of the
35 recorder of each county wherein the mortgaged or trust property
36 or some part or parcel thereof is situated, a notice of default. That
37 notice of default shall include all of the following:

38 (A) A statement identifying the mortgage or deed of trust by
39 stating the name or names of the trustor or trustors and giving the
40 book and page, or instrument number, if applicable, where the

1 mortgage or deed of trust is recorded or a description of the
2 mortgaged or trust property.

3 (B) A statement that a breach of the obligation for which the
4 mortgage or transfer in trust is security has occurred.

5 (C) A statement setting forth the nature of each breach actually
6 known to the beneficiary and of his or her election to sell or cause
7 to be sold the property to satisfy that obligation and any other
8 obligation secured by the deed of trust or mortgage that is in
9 default.

10 (D) If the default is curable pursuant to Section 2924c, the
11 statement specified in paragraph (1) of subdivision (b) of Section
12 2924c.

13 (2) Not less than three months shall elapse from the filing of
14 the notice of default.

15 (3) Except as provided in paragraph (4), after the lapse of the
16 three months described in paragraph (2), *and the requirements of*
17 *Sections 2924.9, 2924.10, and 2924.11 have been met, the*
18 mortgagee, trustee, or other person authorized to take the sale shall
19 give notice of sale, stating the time and place thereof, in the manner
20 and for a time not less than that set forth in Section 2924f.

21 (4) Notwithstanding paragraph (3), the mortgagee, trustee, or
22 other person authorized to take sale may ~~file~~ *record* a notice of
23 sale pursuant to Section 2924f up to five days before the lapse of
24 the three-month period described in paragraph (2), provided that
25 the date of sale is no earlier than three months and 20 days after
26 ~~the filing recording of the notice of default.~~ *default, and the*
27 *requirements of Sections 2924.9, 2924.10, and 2924.11 have been*
28 *met.*

29 (5) *Except as provided in subdivisions (c) and (d) of Section*
30 *2924g, the trustee, mortgagee, or beneficiary, or any of their*
31 *authorized agents shall provide written notice to the borrower*
32 *within five calendar days after the postponement of a foreclosure*
33 *sale and, if known to the trustee, mortgagee, beneficiary, or any*
34 *of their authorized agents at the time of the notice, the new sale*
35 *date and time, and, if applicable, any new location, whenever the*
36 *new sale date is at least 10 calendar days after the date of*
37 *postponement.*

38 (b) In performing acts required by this article, the trustee shall
39 incur no liability for any good faith error resulting from reliance
40 on information provided in good faith by the beneficiary regarding

1 the nature and the amount of the default under the secured
2 obligation, deed of trust, or mortgage. In performing the acts
3 required by this article, a trustee shall not be subject to Title 1.6c
4 (commencing with Section 1788) of Part 4.

5 (c) A recital in the deed executed pursuant to the power of sale
6 of compliance with all requirements of law regarding the mailing
7 of copies of notices or the publication of a copy of the notice of
8 default or the personal delivery of the copy of the notice of default
9 or the posting of copies of the notice of sale or the publication of
10 a copy thereof shall constitute prima facie evidence of compliance
11 with these requirements and conclusive evidence thereof in favor
12 of bona fide purchasers and encumbrancers for value and without
13 notice.

14 (d) All of the following shall constitute privileged
15 communications pursuant to Section 47:

16 (1) The mailing, publication, and delivery of notices as required
17 by this section.

18 (2) Performance of the procedures set forth in this article.

19 (3) Performance of the functions and procedures set forth in
20 this article if those functions and procedures are necessary to carry
21 out the duties described in Sections 729.040, 729.050, and 729.080
22 of the Code of Civil Procedure.

23 (e) There is a rebuttable presumption that the beneficiary
24 actually knew of all unpaid loan payments on the obligation owed
25 to the beneficiary and secured by the deed of trust or mortgage
26 subject to the notice of default. However, the failure to include an
27 actually known default shall not invalidate the notice of sale and
28 the beneficiary shall not be precluded from asserting a claim to
29 this omitted default or defaults in a separate notice of default.

30 ~~(f) This section shall become operative on January 1, 2011.~~

31 *SEC. 4. Section 2924 of the Civil Code, as amended by Section*
32 *2 of Chapter 180 of the Statutes of 2010, is repealed.*

33 ~~2924. (a) Every transfer of an interest in property, other than~~
34 ~~in trust, made only as a security for the performance of another~~
35 ~~act, is to be deemed a mortgage, except when in the case of~~
36 ~~personal property it is accompanied by actual change of possession,~~
37 ~~in which case it is to be deemed a pledge. Where, by a mortgage~~
38 ~~created after July 27, 1917, of any estate in real property, other~~
39 ~~than an estate at will or for years, less than two, or in any transfer~~
40 ~~in trust made after July 27, 1917, of a like estate to secure the~~

1 performance of an obligation, a power of sale is conferred upon
2 the mortgagee, trustee, or any other person, to be exercised after
3 a breach of the obligation for which that mortgage or transfer is a
4 security, the power shall not be exercised except where the
5 mortgage or transfer is made pursuant to an order, judgment, or
6 decree of a court of record, or to secure the payment of bonds or
7 other evidences of indebtedness authorized or permitted to be
8 issued by the Commissioner of Corporations, or is made by a public
9 utility subject to the provisions of the Public Utilities Act, until
10 all of the following apply:

11 (1) The trustee, mortgagee, or beneficiary, or any of their
12 authorized agents shall first file for record, in the office of the
13 recorder of each county wherein the mortgaged or trust property
14 or some part or parcel thereof is situated, a notice of default. That
15 notice of default shall include all of the following:

16 (A) A statement identifying the mortgage or deed of trust by
17 stating the name or names of the trustor or trustors and giving the
18 book and page, or instrument number, if applicable, where the
19 mortgage or deed of trust is recorded or a description of the
20 mortgaged or trust property.

21 (B) A statement that a breach of the obligation for which the
22 mortgage or transfer in trust is security has occurred.

23 (C) A statement setting forth the nature of each breach actually
24 known to the beneficiary and of his or her election to sell or cause
25 to be sold the property to satisfy that obligation and any other
26 obligation secured by the deed of trust or mortgage that is in
27 default.

28 (D) If the default is curable pursuant to Section 2924e, the
29 statement specified in paragraph (1) of subdivision (b) of Section
30 2924e.

31 (2) Not less than three months shall elapse from the filing of
32 the notice of default.

33 (3) Except as provided in paragraph (4), after the lapse of the
34 three months described in paragraph (2), the mortgagee, trustee,
35 or other person authorized to take the sale shall give notice of sale,
36 stating the time and place thereof, in the manner and for a time
37 not less than that set forth in Section 2924f.

38 (4) Notwithstanding paragraph (3), the mortgagee, trustee, or
39 other person authorized to take sale may file a notice of sale
40 pursuant to Section 2924f up to five days before the lapse of the

1 ~~three-month period described in paragraph (2), provided that the~~
2 ~~date of sale is no earlier than three months and 20 days after the~~
3 ~~filing of the notice of default.~~

4 (b) ~~In performing acts required by this article, the trustee shall~~
5 ~~incur no liability for any good faith error resulting from reliance~~
6 ~~on information provided in good faith by the beneficiary regarding~~
7 ~~the nature and the amount of the default under the secured~~
8 ~~obligation, deed of trust, or mortgage. In performing the acts~~
9 ~~required by this article, a trustee shall not be subject to Title 1.6e~~
10 ~~(commencing with Section 1788) of Part 4.~~

11 (c) ~~A recital in the deed executed pursuant to the power of sale~~
12 ~~of compliance with all requirements of law regarding the mailing~~
13 ~~of copies of notices or the publication of a copy of the notice of~~
14 ~~default or the personal delivery of the copy of the notice of default~~
15 ~~or the posting of copies of the notice of sale or the publication of~~
16 ~~a copy thereof shall constitute prima facie evidence of compliance~~
17 ~~with these requirements and conclusive evidence thereof in favor~~
18 ~~of bona fide purchasers and encumbrancers for value and without~~
19 ~~notice.~~

20 (d) ~~All of the following shall constitute privileged~~
21 ~~communications pursuant to Section 47:~~

22 (1) ~~The mailing, publication, and delivery of notices as required~~
23 ~~by this section.~~

24 (2) ~~Performance of the procedures set forth in this article.~~

25 (3) ~~Performance of the functions and procedures set forth in~~
26 ~~this article if those functions and procedures are necessary to carry~~
27 ~~out the duties described in Sections 729.040, 729.050, and 729.080~~
28 ~~of the Code of Civil Procedure.~~

29 (e) ~~There is a rebuttable presumption that the beneficiary~~
30 ~~actually knew of all unpaid loan payments on the obligation owed~~
31 ~~to the beneficiary and secured by the deed of trust or mortgage~~
32 ~~subject to the notice of default. However, the failure to include an~~
33 ~~actually known default shall not invalidate the notice of sale and~~
34 ~~the beneficiary shall not be precluded from asserting a claim to~~
35 ~~this omitted default or defaults in a separate notice of default.~~

36 (f) ~~This section shall become operative on January 1, 2011.~~

37 *SEC. 5. Section 2924.9 is added to the Civil Code, to read:*

38 *2924.9. Within five calendar days after recording a notice of*
39 *default pursuant to Section 2924, a trustee, mortgagee, beneficiary,*

1 or authorized agent shall send a written communication to the
2 borrower that includes all of the following information:

3 (a) That the borrower can still be evaluated for alternatives to
4 foreclosure.

5 (b) Whether an application is required to be submitted by the
6 borrower in order to be considered for a foreclosure prevention
7 alternative.

8 (c) The means and process by which a borrower may obtain an
9 application for a loan modification or any foreclosure prevention
10 alternative and the deadlines for any submission to be timely
11 processed. Any statement of applicable deadlines shall include
12 information relating to the requirements and procedures set forth
13 in Sections 2924.10 and 2924.11.

14 (d) The toll-free telephone number made available by the Office
15 of Homeowner Protection.

16 SEC. 6. Section 2924.10 is added to the Civil Code, to read:

17 2924.10. (a) If a borrower submits an application for a loan
18 modification within 60 days after the recording of a notice of
19 default, a mortgagee, trustee, beneficiary, or authorized agent
20 shall not record a notice of sale while the loan modification
21 application is pending. Notwithstanding paragraphs (3) and (4)
22 of subdivision (a) of Section 2924, a mortgagee, trustee,
23 beneficiary, or authorized agent shall not record a notice of sale
24 under this section until either of the following:

25 (1) The mortgagee, beneficiary, or authorized agent makes a
26 determination that the borrower is not eligible for a loan
27 modification.

28 (2) If the borrower does not accept an offered loan modification
29 or other foreclosure prevention alternative, the earlier of the date
30 of the borrower's decline of the stated offer or the borrower's
31 deadline for accepting the offer, which may not be less than 14
32 days from the date the borrower was notified of the offer.

33 (b) If a borrower accepts an offered trial or permanent loan
34 modification, a mortgagee, trustee, beneficiary, or authorized
35 agent shall not record a notice of sale until the borrower fails to
36 timely submit the first payment or until the borrower otherwise
37 breaches the terms of the offer, whichever occurs first.

38 (c) If the loan modification requested by a borrower under this
39 section is denied, the mortgagee, trustee, beneficiary, or authorized

1 agent shall not record a notice of sale until the later of either of
2 the following:

3 (1) Thirty days after the borrower is notified in writing of the
4 denial.

5 (2) If the borrower appeals the denial, until the later of 15 days
6 after the denial of the appeal or 14 days after the loan modification
7 or other foreclosure prevention alternative is offered after appeal
8 but declined by the borrower, or, if a loan modification is offered
9 after appeal, until the borrower fails to timely submit the first trial
10 period payment or until the borrower breaches the trial plan,
11 whichever event occurs first.

12 (d) This section shall not apply if the mortgage, beneficiary or
13 authorized agent has previously determined that the borrower is
14 not eligible for modification of that loan pursuant to Section
15 2923.6, unless the borrower's application reflects a material
16 change in the borrower's financial circumstances since the date
17 of the borrower's previous application.

18 SEC. 7. Section 2924.11 is added to the Civil Code, to read:

19 2924.11. (a) When a borrower submits an application for a
20 loan modification less than 15 days before a notice of sale may be
21 recorded pursuant to Sections 2924 and 2924f, a mortgagee,
22 trustee, beneficiary, or authorized agent shall not record a notice
23 of sale while the loan modification application is pending.
24 Notwithstanding paragraphs (3) and (4) of subdivision (a) of
25 Section 2924, a mortgagee, trustee, beneficiary, or authorized
26 agent shall not record a notice of sale under this section until
27 either of the following:

28 (1) The mortgagee, trustee, beneficiary, or authorized agent
29 makes a determination that the borrower is not eligible for a loan
30 modification.

31 (2) The mortgagee, trustee, beneficiary, or authorized agent
32 notifies the borrower whether it can conduct an expedited review
33 of the loan modification application or, if not, the reasons it cannot
34 complete the review of the loan modification application.

35 (b) If a borrower accepts an offered trial or permanent loan
36 modification, a mortgagee, trustee, beneficiary, or authorized
37 agent shall not record a notice of sale until the borrower fails to
38 timely submit the first payment or until the borrower otherwise
39 breaches the terms of the offer, whichever occurs first.

1 (c) *This section shall not apply if the mortgagee, beneficiary,*
2 *or authorized agent has previously determined that the borrower*
3 *is not eligible for modification of that loan pursuant to Section*
4 *2923.6 or Section 2924.10, unless the borrower's application*
5 *reflects a material change in the borrower's financial*
6 *circumstances since the date of the borrower's previous*
7 *application.*

8 SEC. 8. *Section 2924.12 is added to the Civil Code, to read:*

9 2924.12. (a) *When a borrower submits a loan modification*
10 *application or any document in connection with a loan modification*
11 *application pursuant to Section 2923.6 or 2924.10, the mortgagee,*
12 *trustee, beneficiary, or authorized agent shall do the following:*

13 (1) *Provide written acknowledgment of the receipt of the*
14 *documentation within three business days of receipt. In its initial*
15 *acknowledgment of receipt of the loan modification application,*
16 *the mortgagee, trustee, beneficiary, or authorized agent shall*
17 *include the following information:*

18 (A) *A description of the loan modification process, including*
19 *an estimate of when a decision on the loan modification will be*
20 *made after a completed application has been submitted by the*
21 *borrower and the length of time the borrower will have to consider*
22 *an offer of a loan modification or other foreclosure prevention*
23 *alternative.*

24 (B) *Identification of any deadlines, including deadlines to submit*
25 *missing documentation, that would affect the processing of a loan*
26 *modification application.*

27 (C) *Identification of any expiration dates for submitted*
28 *documents.*

29 (D) *The toll-free telephone number made available by the Office*
30 *of Homeowner Protection.*

31 (2) *Notify the borrower of any deficiency in the borrower's loan*
32 *modification application no later than five business days after*
33 *receipt of the submission of documentation.*

34 (b) *If a borrower's application for a loan modification is denied,*
35 *the borrower shall have 30 days from the date written denial of*
36 *the application is sent to the borrower to appeal the denial.*

37 (c) *Following the denial of a loan modification application*
38 *submitted pursuant to Section 2923.6 or 2924.10, the mortgagee,*
39 *trustee, beneficiary, or authorized agent shall send a written*
40 *nonapproval notice to the borrower identifying the reasons for*

1 denial and the factual information considered, including the
2 following information:

3 (1) The notice shall inform the borrower of the amount of time
4 from the date of the denial letter he or she has to request an appeal
5 of the denial of a loan modification, unless the reason stated for
6 the denial is an ineligible mortgage, an ineligible property, or if
7 the loan modification offer was not accepted by the borrower or
8 the request was withdrawn.

9 (2) If the denial was based on investor disallowance, the
10 mortgagee, trustee, beneficiary, or authorized agent shall disclose
11 in the written notice the name of the investor or investment trust,
12 if applicable, and state the specific reasons for the investor denial.

13 (3) If the denial is the result of a net present value calculation,
14 the mortgagee, trustee, beneficiary, or authorized agent shall
15 provide in the written notice the monthly gross income and property
16 value used in the calculation and inform the borrower of his or
17 her right to request a full appraisal to be conducted of the property
18 by an independent licensed appraiser, at borrower expense if the
19 borrower chooses to appeal the denial.

20 (4) The toll-free telephone number made available by the Office
21 of Homeowner Protection.

22 (d) If the mortgagee, trustee, beneficiary, or authorized agent
23 denies a borrower's appeal, the denial letter shall include a
24 description of other available loss mitigation, including short sales
25 and deeds in lieu of foreclosure.

26 SEC. 9. Section 2924.13 is added to the Civil Code, to read:

27 2924.13. (a) A mortgagee, trustee, beneficiary, or authorized
28 agent shall not record a notice of sale under any of the following
29 circumstances:

30 (1) The borrower is in compliance with the terms of a trial or
31 permanent loan modification, forbearance, or repayment plan.

32 (2) A short sale or deed-in-lieu of foreclosure has been approved
33 by all parties, including the first lien investor, the junior lienholder,
34 and the mortgage insurer, as applicable, and proof of funds or
35 financing has been provided to the mortgagee, trustee, beneficiary,
36 or authorized agent.

37 (b) When a borrower accepts an offered loan modification, the
38 mortgagee, trustee, beneficiary, or authorized agent shall provide
39 the borrower with a copy of the fully executed loan modification
40 agreement following receipt of the executed copy from the

1 borrower. If the modification was not made in writing, the
2 mortgagee, trustee, beneficiary, or authorized agent shall provide
3 the borrower with a written summary of its terms as soon as
4 possible following the approval of the modification.

5 (c) A mortgagee, trustee, beneficiary, or authorized agent shall
6 record a rescission of a notice of default upon the borrower executing
7 a permanent loan modification.

8 (d) The mortgagee, trustee, beneficiary, or authorized agent
9 shall make publicly available information on its qualification
10 processes, all required documentation and information necessary
11 for a complete loan modification application, and key eligibility
12 factors for all proprietary loan modifications.

13 (e) The mortgagee, trustee, beneficiary, or authorized agent
14 shall not charge any application, processing, or other fee for a
15 proprietary loan modification.

16 (f) The mortgagee, trustee, beneficiary, or authorized agent
17 shall track outcomes and maintain records regarding
18 characteristics, including, but not limited to, debt-to-income ratios
19 of modified payments and the percentage change in monthly
20 payment amounts, and performance of proprietary loan
21 modifications. A mortgagee, trustee, beneficiary, or authorized
22 agent shall provide a description of modification waterfalls,
23 eligibility criteria, and modification terms on a publicly available
24 Internet Web site.

25 (g) The mortgagee, trustee, beneficiary, or authorized agent
26 shall not collect any late fees for periods during which a complete
27 loan modification is under consideration or a denial is being
28 appealed, the borrower is making timely trial or permanent
29 modification payments, or a short sale offer is being evaluated.

30 (h) Nothing in this article obviates or supersedes the obligations
31 of the signatories to the National Mortgage Settlement.

32 SEC. 10. Section 2924.14 is added to the Civil Code, to read:

33 2924.14. (a) A borrower may seek an order in any court having
34 jurisdiction to enjoin any pending trustee's sale, if a notice of sale
35 has been recorded and the borrower reasonably believes that the
36 mortgagee, trustee, beneficiary, or authorized agent failed to
37 comply with the requirements of Section 2923.5, 2923.6, 2924,
38 2924.9, 2924.10, 2924.11, 2924.12, 2924.13, or 2924f. Any
39 injunction shall remain in place until the mortgagee, trustee,
40 beneficiary, or authorized agent has complied with the

1 requirements of Sections 2923.5, 2923.6, 2924, 2924.9, 2924.10,
2 2924.11, 2924.12, 2924.13, and 2924f. A borrower who obtains
3 an injunction shall be awarded reasonable attorneys' fees and
4 costs.

5 (b) (1) Following a trustee's sale, a borrower may recover the
6 greater of actual damages or ten thousand dollars (\$10,000) plus
7 reasonable attorney's fees and costs in any court of competent
8 jurisdiction, if the borrower reasonably believes that the
9 mortgagee, trustee, beneficiary, or authorized agent failed to
10 comply with the requirements of Section 2923.5, 2923.6, 2924,
11 2924.9, 2924.10, 2924.11, 2924.12, 2924.13, or 2924f.

12 (2) A court may award a borrower the greater of treble actual
13 damages or statutory damages of fifty thousand dollars (\$50,000),
14 plus reasonable attorney's fees and costs, if it finds that the
15 violation of Section 2923.5, 2923.6, 2924, 2924.9, 2924.10,
16 2924.11, 2924.12, 2924.13, or 2924f was intentional or reckless
17 or resulted from willful misconduct by a mortgagee, trustee,
18 beneficiary, or authorized agent.

19 (c) No violation of this article shall affect the validity of a sale
20 in favor of a bona fide purchaser and any of its encumbrancers
21 for value without notice.

22 (d) Notwithstanding subdivisions (a) and (b), a borrower may
23 not obtain relief under this section for any violation that was
24 technical or de minimis in nature such that it did not impact the
25 borrower's ability to pursue an alternative to foreclosure as
26 provided by this article.

27 (e) It shall be an affirmative defense to any liability for violation
28 of Sections 2923.5, 2923.6, 2924.9, 2924.10, 2924.11, 2924.12,
29 2924.13, and 2924.15, that a signatory to a consent judgment
30 entered in the case entitled *United States of America v. Bank of*
31 *America Corporation*, filed in the Federal District Court for the
32 District of Washington, D.C., case number 1:12-cv-00361 RMC,
33 is in compliance with that consent judgment while the consent
34 judgment is in effect.

35 (f) A third party encumbrancer shall not be relieved from
36 liability resulting from violations of Section 2923.5, 2923.6, 2924,
37 2924.9, 2924.10, 2924.11, 2924.12, 2924.13, or 2924f committed
38 by that third party encumbrancer, which occurred prior to the sale
39 of the subject property to the bona fide purchaser.

40 SEC. 11. Section 2924.15 is added to the Civil Code, to read:

1 2924.15. *Unless otherwise provided, Sections 2923.6, 2923.7,*
2 *2923.9, 2924.9, 2924.10, 2924.11, 2924.12, 2924.13, 2924.15,*
3 *and 2924f, shall apply to mortgages or deeds of trust that are*
4 *secured by residential real property containing no more than four*
5 *dwelling units.*

6 SEC. 12. *Section 2924.16 is added to the Civil Code, to read:*

7 2924.16. (a) *There shall be established within state government*
8 *an Office of Homeowner Protection, which shall have the*
9 *responsibility for all of the following:*

10 (1) *Responding to inquiries and complaints from individuals*
11 *regarding the provisions of this article.*

12 (2) *Attempting to seek compliance by mortgagees, trustees,*
13 *beneficiaries, or authorized agents with the provisions of this*
14 *article.*

15 (3) *Maintaining an Internet Web site that is capable of receiving*
16 *inquiries and complaints from individuals and that provides*
17 *information to the public about publicly available resources*
18 *intended to help individuals avoid foreclosure.*

19 (4) *Providing an annual report to the Legislature, summarizing*
20 *its activities during the prior year.*

21 (b) *It is the intent of the Legislature that the office be funded*
22 *through payments made available to the Attorney General via the*
23 *Special Deposit Fund, which was created pursuant to the*
24 *settlements approved by the United States District Court for the*
25 *District of Columbia on _____.*

26 SEC. 13. *Section 2924g of the Civil Code is amended to read:*

27 2924g. (a) *All sales of property under the power of sale*
28 *contained in any deed of trust or mortgage shall be held in the*
29 *county where the property or some part thereof is situated, and*
30 *shall be made at auction, to the highest bidder, between the hours*
31 *of 9 a.m. and 5 p.m. on any business day, Monday through Friday.*

32 *The sale shall commence at the time and location specified in*
33 *the notice of sale. Any postponement shall be announced at the*
34 *time and location specified in the notice of sale for commencement*
35 *of the sale or pursuant to paragraph (1) of subdivision (c).*

36 *If the sale of more than one parcel of real property has been*
37 *scheduled for the same time and location by the same trustee, (1)*
38 *any postponement of any of the sales shall be announced at the*
39 *time published in the notice of sale, (2) the first sale shall*
40 *commence at the time published in the notice of sale or*

1 immediately after the announcement of any postponement, and
2 (3) each subsequent sale shall take place as soon as possible after
3 the preceding sale has been completed.

4 (b) When the property consists of several known lots or parcels,
5 they shall be sold separately unless the deed of trust or mortgage
6 provides otherwise. When a portion of the property is claimed by
7 a third person, who requires it to be sold separately, the portion
8 subject to the claim may be thus sold. The trustor, if present at the
9 sale, may also, unless the deed of trust or mortgage otherwise
10 provides, direct the order in which property shall be sold, when
11 the property consists of several known lots or parcels which may
12 be sold to advantage separately, and the trustee shall follow that
13 direction. After sufficient property has been sold to satisfy the
14 indebtedness, no more can be sold.

15 If the property under power of sale is in two or more counties,
16 the public auction sale of all of the property under the power of
17 sale may take place in any one of the counties where the property
18 or a portion thereof is located.

19 (c) (1) There may be a postponement or postponements of the
20 sale proceedings, including a postponement upon instruction by
21 the beneficiary to the trustee that the sale proceedings be
22 postponed, at any time prior to the completion of the sale for any
23 period of time not to exceed a total of 365 days from the date set
24 forth in the notice of sale. The trustee shall postpone the sale in
25 accordance with any of the following:

26 (A) Upon the order of any court of competent jurisdiction.

27 (B) If stayed by operation of law.

28 (C) By mutual agreement, whether oral or in writing, of any
29 trustor and any beneficiary or any mortgagor and any mortgagee.

30 (D) At the discretion of the trustee.

31 (2) In the event that the sale proceedings are postponed for a
32 period or periods totaling more than 365 days, the scheduling of
33 any further sale proceedings shall be preceded by giving a new
34 notice of sale in the manner prescribed in Section 2924f. New fees
35 incurred for the new notice of sale shall not exceed the amounts
36 specified in Sections 2924c and 2924d, and shall not exceed
37 reasonable costs that are necessary to comply with this paragraph.

38 (d) The notice of each postponement and the reason therefor
39 shall be given by public declaration by the trustee at the time and
40 place last appointed for ~~sale~~. *sale for any postponement that does*

1 *not exceed nine days, otherwise, notice shall be pursuant to*
2 *subdivision (a) of Section 2924. A public declaration of*
3 *postponement shall also set forth the new date, time, and place of*
4 *sale and the place of sale shall be the same place as originally fixed*
5 *by the trustee for the sale. No other notice of postponement need*
6 *be given. However, the sale shall be conducted no sooner than on*
7 *the seventh day after the earlier of (1) dismissal of the action or*
8 *(2) expiration or termination of the injunction, restraining order,*
9 *or stay that required postponement of the sale, whether by entry*
10 *of an order by a court of competent jurisdiction, operation of law,*
11 *or otherwise, unless the injunction, restraining order, or subsequent*
12 *order expressly directs the conduct of the sale within that seven-day*
13 *period. For purposes of this subdivision, the seven-day period shall*
14 *not include the day on which the action is dismissed, or the day*
15 *on which the injunction, restraining order, or stay expires or is*
16 *terminated. If the sale had been scheduled to occur, but this*
17 *subdivision precludes its conduct during that seven-day period, a*
18 *new notice of postponement shall be given if the sale had been*
19 *scheduled to occur during that seven-day period. The trustee shall*
20 *maintain records of each postponement and the reason therefor.*

21 (e) Notwithstanding the time periods established under
22 subdivision (d), if postponement of a sale is based on a stay
23 imposed by Title 11 of the United States Code (bankruptcy), the
24 sale shall be conducted no sooner than the expiration of the stay
25 imposed by that title and the seven-day provision of subdivision
26 (d) shall not apply.

27 *SEC. 14. The provisions of this article are severable. If any*
28 *provision of this article or its application is held invalid, that*
29 *invalidity shall not affect other provisions or applications that can*
30 *be given effect without the invalid provision or application.*

31 ~~SECTION 1. Section 2923.7 is added to the Civil Code, to~~
32 ~~read:~~

33 ~~2923.7. (a) A mortgagee, trustee, beneficiary, or authorized~~
34 ~~agent shall not record a notice of default pursuant to Section 2924~~
35 ~~unless the mortgagee, trustee, beneficiary, or authorized agent has~~
36 ~~made reasonable and good faith efforts to evaluate the borrower~~
37 ~~for available loan modification options to avoid foreclosure.~~

38 ~~(b) If the mortgagee, trustee, beneficiary, or authorized agent~~
39 ~~fails to comply with this section, a borrower shall have a cause of~~

- 1 ~~action to enjoin the foreclosure and to recover damages and~~
- 2 ~~reasonable attorney's fees.~~

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